

1 TONY WEST  
Assistant Attorney General  
2 JOHN R. GRIFFITHS  
Assistant Branch Director  
3 BRADLEY H. COHEN (DC Bar No. 495145)  
Trial Attorney  
4 United States Department of Justice  
Civil Division, Federal Programs Branch  
5 Post Office Box 883  
Washington, D.C. 20044  
6 Tel: (202) 305-9855  
Fax: (202) 318-0486  
7 bradley.cohen@usdoj.gov

8 ALFRED W. RICCIARDI  
Arizona Bar No. 009457  
9 Aiken Schenk Hawkins & Ricciardi P.C.  
4742 N. 24<sup>th</sup> Street, Suite 100  
10 Phoenix, Arizona 85016-4859  
Tel: (602) 248-8203  
11 Fax: (602) 248-8840  
awr@ashrlaw.com

12  
13 UNITED STATES DISTRICT COURT  
14 DISTRICT OF ARIZONA  
15

16 HEIN HETTINGA AND ELLEN  
HETTINGA d/b/a SARAH FARMS,

17 Plaintiffs,

18 v.

19 THOMAS J. VILSACK, in his capacity as  
20 Secretary of the UNITED STATES  
DEPARTMENT OF AGRICULTURE,

21 Defendant.  
22

09-CV-00204-PHX-JWS

**RESPONSE TO COURT ORDER OF  
JUNE 3, 2009, STIPULATION TO  
SET BRIEFING SCHEDULE FOR  
MOTIONS FOR SUMMARY  
JUDGMENT, AND PLAINTIFFS'  
REQUEST FOR ORAL ARGUMENT**

23 Plaintiffs Hein Hettinga and Ellen Hettinga, d/b/a Sarah Farms (“plaintiffs” or  
24 “Hettinga”), and defendant Thomas J. Vilsack, in his capacity as Secretary of the United  
25 States Department of Agriculture (“defendant”) pursuant to the Court’s Order dated June 3,  
26 2009, advise the Court that plaintiffs seek declaratory relief which would reverse an  
27 administrative decision of the United States Department of Agriculture pursuant to the  
28

provisions of 7 U.S.C. § 608c(15)(B). This Court is vested with jurisdiction in equity to review the ruling of the Department of Agriculture under that statute as well as the provision of the Administrative Procedure Act. 5 U.S.C. § 702, et seq. A jury trial has been requested but the parties agree that there is no right to a jury trial in this case because there is no Seventh Amendment right to a jury trial in cases against the United States, and Congress has not affirmatively and unambiguously provided a statutory right to a jury trial in this instance.

Pursuant to the Court's Order of June 3, 2009, the parties have prepared a proposed briefing schedule regarding motions for summary judgment to be filed based upon the administrative record. The proposed briefing schedule is as follows:

1. Plaintiffs will file their Motion for Summary Judgment no later than September 7, 2009.
2. Defendant will file his Combined Opposition to plaintiffs' Motion for Summary Judgment and Cross-Motion for Summary Judgment motion no later than October 8, 2009.
3. Plaintiffs will file their Combined Reply in Support of Plaintiffs' Motion for Summary Judgment and Opposition to Defendant's Motion for Summary Judgment no later than October 26, 2009.
4. Defendant will file his Reply in Support of his Motion for Summary Judgment no later than October 30, 2009.

Pursuant to LR Civ. 7.2(f), Rules of Practice of the United States District Court for the District of Arizona, the Hettingas believe that oral argument on the cross-motions for summary judgment would assist the Court in making a decision on the Motions. Therefore, the Hettingas request oral argument. Defendant believes that the issues in this case are straightforward and can best be resolved through written briefing. If after reviewing the cross-motions, the Court determines that oral argument would be of assistance, Defendant has no objection to plaintiffs' request.

Pursuant to Paragraph II(C)(3), District of Arizona ECF Administrative Policies and

1 Procedures Manual (May 19, 2009), both parties certify that the content of this stipulation is  
2 acceptable to all registered signatories required to sign it. A proposed form of order is  
3 submitted herewith.

4  
5 Dated: June 23, 2009

Respectfully submitted,

6 TONY WEST  
7 Assistant Attorney General

8 JOHN R. GRIFFITHS  
9 Assistant Branch Director

10 /s/ Bradley H. Cohen  
11 BRADLEY H. COHEN  
12 Trial Attorney  
13 United States Department of Justice  
14 Civil Division, Federal Programs Branch  
Post Office Box 883  
Washington, D.C. 20044  
Tel: (202) 305-9855  
Fax: (202) 318-0486  
[bradley.cohen@usdoj.gov](mailto:bradley.cohen@usdoj.gov)

15 Counsel for Defendant

16 /s/ Alfred W. Ricciardi  
17 ALFRED W. RICCIARDI  
18 Arizona Bar No. 009457  
19 Aiken Schenk Hawkins & Ricciardi P.C.  
20 4742 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-4859  
Tel: (602) 248-8203  
Fax: (602) 248-8840  
[awr@ashrlaw.com](mailto:awr@ashrlaw.com)

21 Counsel for Plaintiffs  
22  
23  
24

25 **CERTIFICATE OF SERVICE**

26 I hereby certify that on June 23, 2009, I caused a copy of the foregoing RESPONSE  
27 TO COURT ORDER OF JUNE 3, 2009, STIPULATION TO SET BRIEFING SCHEDULE  
28 FOR MOTIONS FOR SUMMARY JUDGMENT, AND PLAINTIFFS' REQUEST FOR

1 ORAL ARGUMENT to be electronically transmitted to the Clerk's Office using the  
2 CM/ECF System for filing along with and transmittal of a Notice of Electronic Filing to the  
3 following CM/ECF registrants:

4 Alfred W. Ricciardi  
5 Aiken Schenk Hawkins & Ricciardi P.C.  
6 4742 North 24th Street, Suite 100  
7 Phoenix, Arizona 85016  
8 Tel: (602) 248-8203  
9 Fax: (602) 248-8840  
awr@ashrlaw.com

10 June 23, 2009

11 /s/ Bradley H. Cohen  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28